

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(GO. Rt. No. 196/AIL/Lab./J/2011, dated 22nd November 2011)

NOTIFICATION

Whereas, the Award in I.D. No. 30/2005, dated 23-6-2011 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Pondicherry Co-operative Spinning Mills, Thirubuvanaï and Pondicherry Co-operative Mills National Employees Union (INTUC) over claim of promotion to the post of Fitter to Thiru K. Ramasamy has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

N. APPA RAO,

Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. MOHANDASS, M.A. M.L.,
II Additional District Judge
Presiding Officer, Labour Court,
Pondicherry.

Thursday, the 23rd day of June 2011

I. D. No. 30/2005

Pondicherry Co-operative Spinning Mills
National Employees Union (INTUC),
Sinnapet, Kandamangalam,
Thirubuvanaï Post, Pondicherry .. Petitioner

Versus

The Administrative Manager,
Pondicherry Co-operative Spinning Mills,
P.No.396, Thirubuvanaï. .. Respondent

This petition coming before me for final hearing on 21-6-2011 in the presence of Thiru S. Thanikachalam, advocate for the petitioner, M/s. Law Solvers, advocates for the respondent, upon hearing both sides, after perusing the case records and having stood over for consideration till this day, this court delivered the following:

AWARD

This industrial dispute arises out of the reference made by the Government of Pondicherry, *vide* G.O. Rt. No. 173/2005/Lab./AIL/J, dated 15-9-2005 of the Labour Department, Pondicherry, to resolve the following dispute between the petitioner and the respondent, *viz.*,

(1) Whether the claim of the petitioner Thiru K. Ramasamy that he is a technically qualified and seniormost person to be promoted to the post of Fitter (Maintenance) in M/s. Pondicherry Co-operative Spinning Mills Limited, Pondicherry is justified or not?

(2) If not, what remedy, he is entitled to?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. The petitioner in his claim statement would aver that one K. Ramasamy applied to the recruitment of post of Fitter (Maintenance) and he was called for interview by virtue of memorandum, dated 6-5-1986 and he was selected for the said post, but he was posted as Assistant Fitter (Maintenance). He had accepted the offer of appointment as Assistant Fitter (Maintenance) on assurance given by the respondent that he has to complete three years of probation and he would be considered for the post of Fitter (Maintenance). The said Ramasamy had joined the duty along with one Rathinam, who was posted as Fitter (Maintenance), but he was posted as Assistant Fitter (Maintenance) even though he is technically qualified. The petitioner by several representations to the respondent to fill up the post of Fitter (Maintenance), but the respondent did not care to fill up the said post till date. The petitioner was not given any promotion even though he has completed 23 years as Assistant Fitter (Maintenance). The annual increment proceedings, dated 8-8-1989 and 3-7-1990 and the pay slip for the month of June 1994, which are the respondent's documents, would speak that the petitioner was working in the Fitter category from the date of his appointment. The respondent's attitude clearly shows that an unfair labour practice and irregularities in administration which is against labour law and practice. Hence, this industrial dispute is filed directing the respondent to consider the said Ramasamy for the promotion for the post of Fitter (Maintenance).

3. The respondent filed a counter statement and contended that during the period between 1984 to 1987 quite a number of erection works were going on in the mills and selections were made only to the post of Assistant Fitter which category was only available on the establishment of the mills in different departments. However at the initial stage, it was necessary to have a person in the rank of Fitter to give training to the

Assistant Fitters and hence even though there was no category of Fitter, one Rathinam was appointed as Fitter not on regular basis but on consolidated salary to impart training in erection. The said Rathinam was having a trail of rich experience in spinning mills in Tamil Nadu and hence his services were utilised for above one year in the respondent mills. This was a stopgap appointment and after the said Rathinam left the mills, he was not substituted by any person. Thereafter only the category of Assistant Fitter existed in the mills and consequently, the question of promoting the petitioner as Fitter did not arise at all.

4. On the side of the petitioner, PW.1 was examined and marked Ex.P1 to Ex.P7. On the side of the respondent, RW.1 was examined and Ex.R1 to Ex.R8 were marked.

5. *Now the point for determination is:*

“Whether the petitioner is entitled for the relief sought for?”

On this point:

6. The contention of the petitioner is that one K. Ramasamy applied to the recruitment of post of Fitter (Maintenance) and he was called for interview by virtue of memorandum, dated 6-5-1986 and he was selected for the said post, but he was posted as Assistant Fitter (Maintenance). It is further contended by the petitioner that the said Ramasamy had accepted the offer of appointment as Assistant Fitter (Maintenance) on assurance given by the respondent that he has to complete three years of probation and he would be considered for the post of Fitter (Maintenance) he gave several representations to the respondent to fill up the post of Fitter (Maintenance), but the respondent did not care to fill up the said post till date.

7. In order to prove the said fact, the said Ramasamy was examined as PW.1. PW.1 in his evidence has stated that he applied to the recruitment of post of Fitter (Maintenance) and he was called for interview by virtue of memorandum, dated 6-5-1986 as Ex.P1 and he appeared before the interview committee on 12-5-1986 with required educational qualification and experience and the offer of appointment, dated 30-5-1986 is Ex.P2 and he was selected for the post of Fitter (Maintenance). PW.1 further deposed that he is fully qualified by possessing National Trade Certificate, dated 3-11-1981 in Fitter Trade Ex.P5 and the National Apprenticeship Certificate, dated November 1983 Ex.P6. PW.1 further deposed that he was not given any promotion even though he has completed 23 years of service as Assistant Fitter (Maintenance).

8. *Per contra*, the contention of the respondent is that there is no post of Fitter in the respondent mills and hence the question of promoting the petitioner as

Fitter did not arise at all. In order to prove the same, the Administrative Manager of the respondent mills was examined as RW.1. RW.1 in his evidence has deposed that the interview was conducted for the post of Fitter and one Ramasamy has applied for the said post and he attended the said interview, but he was selected for the post of Assistant Fitter. RW.1 further deposed that 16 persons were working as Assistant Fitter and no one was working as Fitter in the respondent. Ex.R1 to Ex.R8 were marked through RW.1. Ex.R1 is the copy of the offer of appointment issued to the said Ramasamy for the post of Assistant Fitter (Maintenance). Ex.R2 is the copy of the joining report sent by the said Ramasamy to the respondent mill for the post of Assistant Fitter. Ex.R3 is the copy of the proceedings issued by the respondent mills to the said Ramasamy extending the probationary period for one more year in the post of Assistant Fitter. Ex.R4 is the another proceedings, dated 19-10-1987 issued by the respondent mills to the said Ramasamy increasing the consolidated salary from ₹ 600 to ₹ 750. Ex.R5 is the copy of the proceedings, dated 18-6-1988 issued by the respondent to the said Ramasamy fixing the revised basic pay. Ex.R6 is the copy of the letter sent by Ramasamy to the Administrative Manager of the respondent mill. Ex.R7 is the copy of the report of One Man Commission. Ex.R8 is the copy of the service conditions of the employees of the respondent mills.

9. It is admitted by the respondent that the petitioner workman by name K. Ramasamy applied to the recruitment of post of Fitter (Maintenance) and he was called for interview by virtue of memorandum, dated 6-5-1986 as Ex.P1 and he was selected and posted for the post of Assistant Fitter and he joined duty as Assistant Fitter on 10-6-1986. It is also admitted by the respondent that the petitioner workman is fully qualified. The only contention of the respondent is that since there exists the post of Fitter in the respondent mills, the question of promoting the petitioner as Fitter did not arise at all.

10. The memorandum issued by the respondent to the petitioner, dated 6-5-1986 is Ex.P1, Pay slip issued by the respondent to the petitioner, dated 30-6-1994 is Ex.P3 and the proceedings issued by the respondent to the petitioner is dated 8-8-1989. A perusal of Ex.P1 reveals that the memorandum was issued by the respondent to the petitioner workman calling him for an interview to the post of Fitter (Maintenance). If the contention of the respondent that there is no post of Fitter available in the respondent mills is true, how and why they have sent a memorandum to the petitioner workman calling him for an interview to the post of Fitter (Maintenance). There is no plausible explanation from the respondent side in this regard.

Not only in Ex.P1, the designation of the petitioner workman is mentioned as Fitter in Ex.P3 pay slip and Ex.P4 proceedings issued to the petitioner workman by the respondent. RW.1 has also admitted the same in his evidence. The relevant portion of his evidence runs as follows:-

ம.சா.ஆ 3-ல் மனுதாரருக்கு பிட்டர் என்று குறிப்பிட்டு தான் சம்பளம் ரசீதில் உள்ளது என்றால் சரிதான். ம.சா.ஆ. 4-லும் பிட்டர் என்று மனுதாரருக்கு குறிப்பிடப்பட்டுள்ளது என்றால் சரிதான்.

In this regard, it is stated in the counter that it may be true that in certain pay slip issued, the petitioner was designed as Fitter, but that does not confer on the petitioner vested right to be appointed as Fitter and a few clerical errors inadvertently made either in the communication or in the pay slip will not confer any right of promotion unless there exists a post or category of Fitter and there is specific rule or subsidiary regulations for promotion to the post of Fitter. In order to escape from the mistakes committed by the respondent, they have stated this type of evasive answers for the issues raised by the petitioner, which cannot be accepted by this court.

11. At this juncture, it is pertinent to refer the subsidiary regulations relating to service conditions of the employees of the respondent mill, which has been marked as Ex.R8. As per Ex.R8, there are eight category of posts in Administrative Personnel and fourteen category of posts in the technical personnel. In the technical personnel, the eleventh category is mentioned as "Fitter". When the respondent's own document under Ex.R8 clearly speaks about existing of Fitter post in the respondent mill, how can they say that no post of Fitter is existing in their mill. Further RW.1 in his evidence has clearly admitted that the petitioner workman was working for the past 25 years and in the said 25 years, there is no promotion given to him and he was working as Assistant Fitter in all these years. RW.1 in his evidence has further admitted that in Ex.R8 it has been mentioned that if an employee was working for five years, a promotion should have been given to him. A relevant portion of his evidence is as follows:-

மனுதாரர் 25 ஆண்டுகளாக பணிபுரிந்து வருகிறார். அவர் உதவி பிட்டராகத் தான் பணிபுரிந்து வருகிறார். கடந்த 25 வருடமாக அவருக்கு பதவி உயர்வு அளிக்காமல் உதவி பிட்டராகத் தான் பணிபுரிந்து வருகிறார் என்றால் சரிதான். எ.ம.சா.ஆ.8 நிர்வாக விதி பக்கம் 4-ல் துணை பத்தி 17-ல் 5 வருடம் பணிபுரிந்தால் பதவி உயர்வு அளிக்க வேண்டும் என்று குறிப்பிடப்பட்டுள்ளது என்றால் சரிதான்.

It is unfortunate that the petitioner workman have been kept as Assistant Fitter (Maintenance) for more than twenty years as admitted by the respondent, which is against law. When the services of the petitioner

workman are required on a permanent basis for more than 25 years, nothing can stand in the way of promoting him as Fitter. The refusal of promotion by the respondent is shocking and it is definitely discriminative attitude by the respondent. When there is a post of Fitter as could be seen from Ex.R8, the petitioner workman is entitled to be promoted to the said post. In the instant case, despite availability of work, the petitioner workman is being utilised, for the work of Fitter. They cannot now be denied promotion of the petitioner workman on the ground of non-available of the post of Fitter, that too not established by him. It is not the case of the respondent that the petitioner workman was poor in performing his duties. In fact the respondent has admitted that the petitioner was fully qualified with the post of Fitter. The learned counsel for the petitioner has described as the above act of management is *mala fide*, arbitrary and colourable exercise of powers by citing the following judgment:-

Writ petition No. 16090 of 1999

U.P.S.E.B. Vs. Presiding Officer, Labour Court, Kanpur and Another:

"The workman who as was working in a school being managed and controlled by the Corporation applied for the post of Lab Assistant in the Power Corporation but was not promoted on the ground that there is no post of Lab Assistant in the Vidyut Parishad Inter College, Panki, Kanpur.

The case of the petitioner before the Labour Court was that there was no post of Lab Assistant in the said college and the respondent workman was working as Lab Attendant in the said college, hence his claim on the said post in the Power House is not maintainable.

The Labour Court by its award, dated 31-10-1998 granted promotion to respondent No. 2 workman on the post of Lab Assistant with effect from 4-5-1991 in Power House, Panki. It further directed that as posts of Lab Assistants were available in the Power House and no person from the reserved category having been promoted on the said post, the petitioner being a schedule caste candidate be appointed as Lab Assistant there However, even after the award rendered by the Labour Court on 30-3-1992 in the aforesaid adjudication case the workman has not been promoted by the petitioner, which is discrimination. It is *mala fide*, arbitrary and colorable exercise of power.

It is not in dispute that Adjudication Case No.118 of 1986 has been made by the Labour Court in favour of workman directing him to be promoted to the post of Lab Assistant, hence the award of the Labour

Court directing promotion of the post of Lab Assistant in Adjudication Case No. 201 of 1996 was stayed by this court.

... .. However accepting the plea of the employers that the award in Adjudication Case No. 201 of 1996 is barred by principles of *res judication* on the face of it as the matter of promotion has already been decided in Adjudication Case No.118 of 1988 between the parties and also considering the fact that the employers have kept one post of reserved category vacant in Panki Power House for the petitioner and have deposited the difference of salary in terms of order, dated 20-11-1999 in the writ petition. This petition is allowed merely on ground of *res judicata* as pleaded by the petitioner.

It is however, directed that in the facts and circumstances the petitioner will appoint the petitioner in the Panki Power Station, Kanpur with all consequential benefits of the said post pursuant to award in Adjudication Case No.118 of 1988 within a period of one month from today which according to the petitioner has not been challenged and has become final. The difference in wages deposited by the petitioner in terms of order, dated 20-11-1999 shall be paid to the workman concerned accordingly.

12. The contention of the learned counsel for the respondent is that a settlement under section 12(3) of Industrial Disputes Act, 1947 was reached between the management of the mills and the unions including the petitioner union and in categorisation of various workers, only a post of Assistant Fitter has been provided for and there is no post of Fitter at all contemplated for the mills.

13. But in order to prove the said contention, the settlement under section 12(3) of Industrial Disputes Act, 1947, which was reached between the management of the mills and the union has not been produced before this court. In the absence of sufficient evidence, the said contention cannot be accepted. There is no evidence to show that the Ex.R7 was accepted by the authorities concerned. RW.1 has also not stated anything about One Man Commission Report under Ex.R7.

14. Apart from the above, the respondent has admitted that one Rathinam was appointed as Fitter not on regular basis but on consolidated salary to impart training in erection from 9-6-1986 to 9-6-1987 and this was a stopgap appointment and after the said Rathinam left the mills, he was not substituted by any person. When the services of the Fitter are required in the respondent mill as admitted by the respondent and when Ex.R8 speaks about availability of post of Fitter, the petitioner workman by name Ramasamy can be given promotion for the post of Fitter. Under these circumstances, the decision relied on by the learned

counsel for the petitioner is very relevant to this case. Hence, I am inclined to hold that the claim of the petitioner for promotion of the petitioner workman to the post of Fitter (Maintenance) is reasonable. Accordingly, this point is answered in favour of the petitioner.

15. In the result, the industrial dispute is allowed, the respondent is hereby directed to consider the promotion of Thiru K. Ramasamy for the post of Fitter (Maintenance) as per the service conditions of the respondent mill and he is entitled for arrears of differential amount of back wages and other benefits as per rules. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 23rd day of June 2011.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

List of witnesses examined for the petitioner :

P.W.1 —21-10-2010 K. Ramasamy

List of witnesses examined for the respondent :

RW.1 — 15-3-2011 R. Ramakrishnan

List of exhibits marked for the petitioner :

Ex.P1 —Memorandum issued by the respondent to the petitioner, dated 6-5-1986.

Ex.P2 — Offer of appointment, dated 30-5-1986

Ex.P3 — Pay slip of the petitioner, dated 30-6-1994

Ex.P4 — Proceedings issued by the respondent, dated 8-8-1989.

Ex.P5 — National Trade Certificate issued to the petitioner, dated 3-11-1981.

Ex.P6 — National Apprenticeship Certificate for the year November 1983.

Ex.P7 — Order issued by the Labour Department, dated 15-9-2005.

List of exhibits marked for the respondent :

Ex.R1 — Copy of order of appointment issued to the petitioner, dated 30-5-1986.

Ex.R2 — Copy of the joining report by the petitioner, dated 10-6-1986.

Ex.R3 — Copy of the proceedings, dated 24-9-1987

Ex.R4 — Copy of the proceedings, dated 19-10-1987

Ex.R5 — Copy of the proceedings, dated 18-6-1988

Ex.R6 — Copy of the letter sent by the petitioner, dated 6-6-2005.

Ex.R7 — Report of One Man Commission

Ex.R8 — Service conditions of the employees of the respondent mill.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G.O. Rt. No. 197/AIL/Lab./J/2011, dated 22nd November 2011)

NOTIFICATION

Whereas, the Award in I.D.No. 29/2000, dated 4-8-2011 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Hindustan Lever Limited, (NIU), Puducherry and its workmen represented by Hindustan Lever Employees Union over stoppage of allowances has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G. O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

N. APPA RAO,
Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PONDICHERRY

Present : Thiru T. MOHANDASS, M.A., M.L.,
Presiding Officer,
II Additional District Judge,

Thursday, the 4th day of August 2011

I.D. No. 29/2000

Hindustan Lever Employees Union,
16/2, III Cross, Sithankudi,
Pondicherry-13.
Represented by its Secretary
P. Selvaganthi

.. Petitioner

Versus

The Managing Director,
M/s. Hindustan Lever Limited, (NIU),
C61-68, PIPDIC Industrial Estate,
Mettupalayam, Pondicherry-9

.. Respondent

This petition coming on this day for hearing before me in the presence of Thiru T. Tirunavukarasu, advocate for the petitioner and Thiru L. Sathish, advocate for the respondent and upon perusing the case records, this court made the following :

ORDER

This industrial dispute has arisen between the petitioner and the management of M/s. Hindustan Lever Limited, (NIU), Mettupalayam, Pondicherry and its workman represented by Hindustan Lever Employees Union in respect of the matter the stoppage of allowances to the workmen G. O. Rt. No. 158/2000/Lab./AIL/J, dated 16-11-2000 of the Labour Department, Pondicherry on the following :

Whether the stoppage of allowances relating to *ad hoc* amount/gifts, educational assistance, the housing loan interest subsidy scheme and no loan savings scheme stipulated in clauses 31, 13, 19 and 20 respectively of settlement No. 10/98/LO(C), dated 2-3-1998, to the workmen mentioned hereunder by the management of Hindustan Lever Limited, (NIU), Mettupalayam, Pondicherry is justified or not? if not, to give appropriate directions.

2. Today (4-8-2011), this case was called. I.A. No. 81/2011 petition is allowed. Hence this industrial dispute is dismissed. No costs.

Written and pronounced by me in the open court on this the 4th day of August, 2011.

T. MOHANDASS,
Presiding Officer,
II Additional District Judge,
Pondicherry.

GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G.O. Rt. No. 198/AIL/Lab./J/2011, dated 22nd November 2011)

NOTIFICATION

Whereas, the Award in I.D.No. 51/2005, dated 19-4-2011 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Neycer (I) Limited, Puducherry and its workman Thiru S. Shanmugam over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947)

read with the notification issued in Labour Department's G. O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry

(By order)

N. APPA RAO,

Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present: Thiru T. MOHANDASS, M.A., M.L.,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

Tuesday, the 19th day of April 2011

I. D. No. 51/2005

Thiru S. Shanmugam,
S/o. Subramanian,
84, Pillaiyarkuppam Road,
Kirumampakkam Post,
Bahour Commune,
Pondicherry-607 402. . . Petitioner

Versus

The Managing Director,
M/s. Neycer India Limited,
Pillaiyarkuppam and Post,
Bahour Commune,
Pondicherry-607 402 . . Respondent

This petition coming before me for final hearing on 28-3-2011 in the presence of Thiru G. Krishnan, advocate for the petitioner, Thiruvalargal S. Karthikeyan and C. Arivazhagane, advocates for the respondent, upon hearing both sides, after perusing the case records and having stood over for consideration till this day, this court delivered the following:

AWARD

This industrial dispute arises out of the reference made by the Government of Pondicherry, *vide* G.O. Rt. No.211/2005/Lab./AIL/J, dated 26-10-2005 of the Labour Department, Pondicherry, to resolve the following dispute between the petitioner and the respondent, *viz.*,

(1) Whether the non-employment of S. Shanmugam is justified or not?

(2) To what remedy, he is entitled to?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. The petitioner in his claim statement would aver that the petitioner was working in the respondent factory in regular and permanent employment since 18-5-1987 and he was also functioning as Vice- President of Neycer National Employees Union. As the petitioner was an office-bearer of trade union, there was ill will of the respondent management and due to that, he was issued by the charge sheets, dated 4-11-2003 and 24-5-2004. The respondent management appointed an Enquiry Officer, namely K. Babu, advocate, to enquire him into the charge levelled against him. Enquiry Officer has acted as an authorised officer of the respondent and he himself has taken a decision about the explanation and continued with the enquiry, which act was in total violation of settled principles of law. The Enquiry Officer failed to make proper analysis of the evidence of the witnesses and his report is solely in favour of the respondent management. Finally, the respondent management terminated the service of the petitioner. The order of dismissal passed against the petitioner is illegal, improper, unjust, capricious and *mala fide*. Hence, this petition to set aside the order of dismissal of the petitioner, dated 20-12-2004 and to reinstate the petitioner in the respondent factory at Puducherry with full back wages, continuity of service and other consequential benefits.

3. The respondent filed a common counter by denying the allegations contained in the claim statement. The respondent submits that its industry at Pondicherry is a sick industry which incurred huge financial losses eroding the net worth entirely and was referred to the BIFR (Board for Industrial and Financial Reconstructions). The petitioner was in service of the respondent factory from 18-5-1987 to 20-12-2004 and he was placed under suspension pending enquiry with effect from 4-11-2003. The first charge sheet, dated 5-8-2003 was levelled against the petitioner under the following clauses of the certified standing orders of the company, clause (1) 25.2-willful insubordination or willful disobedience, (2) 25.3-Illegal stoppage of work or instigating or otherwise acting in furtherance of such a stoppage, (3) 25.4-Slowing down in performance of work, (4) 25.29-Insulting, rude or insolent behaviour towards any officer, (5) 25.30-Commission of any act subversive of discipline. Further, on 24-5-2004, another charge sheet was issued to him but he refused to receive the same. The domestic enquiry was conducted on various dates from 24-6-2004 to 23-9-2004 and the Enquiry Officer had conducted the enquiry clearly and strictly adhering to the principles of natural justice in stage by stage and had given the utmost

opportunity to the petitioner for better defence and the Enquiry Officer has concluded in his report, dated 18-11-2004 that the charge against the petitioner were proved. As the enquiry being conducted as per the procedures laid down under law and the certified standing orders of the respondent company, the petitioner has no *locus standi* to seek reinstatement and back wages.

4. A petitioner under sections 11(1) and 11(3) of Industrial Disputes Act has been under I.A.No.108/2010 to decide the validity of the enquiry as preliminary issue. In the said petition, the counter was also filed by the respondent. The matter was posted for enquiry.

5. During the enquiry, it is reported that the dispute was settled between the parties.

6. On 19-4-2004, the petitioner and petitioner counsel present. Respondent Manager (Administration) Mr. G.R.Ananthakrishnan present. Respondent counsel present. Joint memo. of settlement filed and recorded as the dispute settled. Award is passed as per the joint memo. of Settlement. The 18(1) settlement and memo. will form part of award. No costs.

Written and pronounced by me in the open court on this the 19th day of April 2011.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

**GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT**

(GO. Rt. No. 199/AIL/Lab./J/2011, dated 23rd November 2011)

NOTIFICATION

Whereas, the Award in I.D. No. 1/2006, dated 3-8-2011 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Sri Bhagya Lakshmi Agros, Yanam and Yanam Rice Mill Workers Union, Yanam (Regn. No. 1296/RTU/2002) over non-employment of 30 workers has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said award shall be published in the official gazette, Puducherry.

(By order)

N. APPA RAO,
Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. MOHANDASS, M.A. M.L.,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

Wednesday, the 3rd day of August 2011

I.D. No. 1/2006

The President,
Yanam Rice Mill Workers' Union,
Adivipolam, Yanam. . . Petitioner

Versus

The Managing Director,
Sri Bhagya Lakshmi Agros, Yanam. . . Respondent

This petition coming before me for final hearing on 27-7-2011 in the presence of Thiruvalargal R.S. Zivanandam, D. Ravichandran and S. Ashok Kumar, advocates for the petitioners, Thiru L. Sathish and Thiru S. Doraissamy, advocates for the respondent, upon hearing both sides, after perusing the case records and having stood over for consideration till this day, this court delivered the following:

AWARD

This industrial dispute arises out of the reference made by the Government of Pondicherry, *vide* G.O. Rt. No. 3/2006/Lab./AIL/J of the Labour Department, Pondicherry, to resolve the following dispute between the petitioners and the respondent, *viz.*,

(1) Whether the non-employment of 30 workers *viz.*, 1. Neelam Venkateswaralu, 2. Marri Kamaraju, 3. Ponnada Satyanarayana, 4. Kaja Srinu, 5. Kaja Rambabu, 6. Kaja Annavarm, 7. Chilla Srinu, 8. Vaddi Nageswara Rao, 9. Vaddi Venkateswarlu, 10. Kaja Krishna, 11. Guthula Govindu, 12. Pedireddi Satyanarayan, 13. Mediseti Samba, 14. Mortha Chandrakanth, 15. Polnati Satyanarayana, 16. Polnati Yesu, 17. Gurralla Satyanarayana, 18. Boddu Murali Krishna, 19. Revu Gangadhara Rao, 20. Dadala Balakrishna, 21. Jalam Venkateswarlu, 22. Kukkala Venkateswarlu, 23. Rayudu Rambabu, 24. Rayudu Sivayya, 25. Bolla Venkateswarlu, 26. Thirdala Srinu, 27. Mori Kumar, 28. Pitani Satyanandam, 29. Dunna Nagaraju, 30. Srinu represented by Yanam Rice Mill Workers' Union, Yanam by the management of M/s. Bhagya Lakshmi Agros, Yanam is justified or not?

(2) If not, what remedy they are entitled to?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. The petitioner in the claim statement would aver that their union is functioning at Yanam and it is a registered union. The members of the petitioner union are workers of Bhagya Lakshmi Rice Mills at Yanam. The petition mentioned workmen were working in the mill from the year 1997. These workers are engaged as piece rate workers. For the convenience of the management, they have engaged these workers in the year 2003 under the contractor's name Sri Bhagya Lakshmi Agros. This fact is not known to these petitioners until they have been terminated illegally from 11-8-2005. On 11-8-2005 the respondent informed the workers not to come to mill, since they were undertaking machinery repair and the mill will not function for a while and therefore they will be informed the resumption of work as soon as the repair work is completed. Even after 13 days, no worker was recalled by the management. *In contra*, the respondent engaged some workers from Yedurlanka, Andhra Pradesh, depriving the said workmen. Hence, this industrial dispute is preferred to reinstate the said workmen.

3. The respondent filed a counter statement and contended that the rice mills and the machineries therein, where the respondent is now carrying on business belongs to M/s. Sri Bhagyalakshmi Rice Mills Ltd., who had leased out the said premises along with the machineries to one Ramakrishna Rice Mills between the period from 1991 to 2001. Thus Sri Bhagyalakshmi Rice Mills never employed workmen of the petitioner union at any point of time. Thereafter in 2001, the mills remained closed till May 2003. The respondent came into existence on 14-5-2003 and it took the mills lease from Sri Bhagyalakshmi Rice Mills.

Out of 30 workmen listed in the claim petition, the workmen listed as 14, 29 and 30, had never worked with the respondent in any capacity. Out of remaining 27 workers, nine of them listed as No. 19 to 27 were engaged by the respondent directly as casual labourers for loading and unloading purpose and remaining 18 workers were engaged as casual labourers through a jattu contract maistry Boddu Murali Krishnan and they were never engaged on permanent basis and were utilized by the respondent only when they had to load or unload any materials. Therefore, the very nature of jobs performed by the workers was casual in nature and they were paid on *pro-rata* basis depending upon the number of bags loaded or unloaded by them. Further except for nine workers, the remaining 18 workers were engaged only through contractor and therefore they do not have any lien over employment with the respondent.

Further none of the workers listed in the claim petition ever completed 240 days in any preceding calendar year and therefore they cannot claim permanent status. Hence, they pray for dismissal of the industrial dispute.

4. On the side of the petitioner, PW1 was examined and marked Ex.P1 to Ex.P6. On the side of the respondent, RW1 was examined and Ex.R1 to Ex.R17 were marked.

5. *Now the point for determination is:*

“Whether the petition mentioned workmen are entitled for the relief sought for?”

On this point :

6. The contention of the petitioners is that the petition mentioned workmen had been working in Bhagya Lakshmi Rice Mill at Yanam since 1997, but they had not been informed that they were contract workers under the said industry. It is further contended that they discharged their work to the entire satisfaction of the respondent management with unblemished records, but they were terminated from 11-8-2005 by the respondent without any reason which is against the natural justice.

7. In order to support their claim, the President of the petitioner's union was examined as PW1 and through him, Ex.P1 to Ex.P6 were marked. PW1 in his evidence has deposed that the petition mentioned workmen were working in the respondent mill from 1997 and they were terminated from 11-8-2005 by the respondent without any reason. Ex.P1 is the copy of the failure report. Ex.P2 is the representation sent by the petition mentioned workers to the respondent. Ex.P3 is the letter, dated 8-12-2005 sent by the petitioner's union to the Commissioner of Labour, Pondicherry. Ex.P4 is the letter, dated 21-12-2005 sent by the petitioner's union to the Minister of Labour, Pondicherry. Ex.P5 is the letter, dated 26-12-2005 sent by the petitioner's union to the Lieutenant-Governor, Pondicherry. Ex.P6 is the copy of the representation sent by the petition mentioned workmen to the respondent.

8. On perusal of Ex.P1 to Ex.P6, it is seen that the conciliation meeting was held between the petition mentioned workmen and the representative of the respondent mill and since no settlement has been arrived between both parties, the failure report was sent by the Conciliation Officer to the Secretary of Labour Department, Pondicherry, who referred the said matter to this court to decide whether the termination of the said workmen is justified or not. A perusal of Ex.P1 to Ex.P6 further reveals that the petitioner's union has sent many representations to the Commissioner of Labour, Minister of Labour and the Lieutenant-Governor, Pondicherry informing about the termination and requesting for their reinstatement. But no records has been produced on the side of the petitioner to prove that the petition mentioned workmen were employees under the respondent mills.

9. *Per contra*, on the side of the respondent, it is contended that the rice mills and the machineries therein where the respondent is now carrying on business belongs to M/s. Sri Bhagyalakshmi Rice Mills Limited, who had leased out the said premises along with the machineries to one Ramakrishna Rice Mill between the period from 1991 to 2001 and thus Sri Bhagyalakshmi Rice Mills never employed workmen of the petitioner union at any point of time and thereafter in 2001, the mills remained closed till May 2003 and the respondent came into existence on 14-5-2003 and it took the mills lease from Sri Bhagyalakshmi Rice Mills.

10. In order to prove his claim, one of the partners of the respondent mill was examined as RW1, who deposed about the said facts. Ex.R1 is the copy of the lease deed, dated 14-8-1999. A perusal of Ex.R1 reveals that one Chintalapudi Krishna Murthy is the owner of the respondent's rice mill, who leased out the said mill along with machineries to one Pathuri Veerraju and Gajjaraju Ramakrishna Satyanarayana Chowdary for a period of three years from 1-11-1999. Ex.R3 is the copy of the Certificate of Registration. A perusal of Ex.R3 reveals that the respondent mills has been started his business and the same was registered in the Deputy Commercial Tax Officer, Yanam on 14-5-2003. Ex.R4 is the copy of the lease deed entered into between Sri Bhagya Lakshmi Modern Rice Mill and Sri Bhagyalakshmi Agros. A perusal of Ex.R4 reveals that Sri Bhagya Lakshmi Modern Rice Mill has been leased out the mills to the respondent for three years from 12-5-2003. Ex.R12 is the statement of income and expenditure of the respondent mill for the year 2004-2005, which would clearly prove that they took the premises on lease in the particular year. Hence, the above records would clearly prove that the respondent mill has started their business only from 12-5-2003. Under these circumstances the contention of the learned counsel for the petitioner that the petition mentioned workmen had been working from 1997 cannot be accepted.

11. RW1 has marked Ex.R6 to Ex.R11 the statement of income and expenditures and the balance sheet of Bhagyalakshmi Rice Mills to show that the said rice mills remained closed right from the year 1997. Though Ex. R6 to Ex.R11 would prove the said fact, they are not connected with this case, since the petitioner's contention is that the petition mentioned workmen were the employees in the Bhagya Lakshmi Agros from 1997.

12. The next contention of the respondent is that out of 30 workmen listed in the claim petition, the workmen listed as 14, 29 and 30, had never worked with the respondent in any capacity and out of remaining 27 workers, nine of them listed as No. 19 to 27 were engaged by the respondent directly as casual labourers for loading

and unloading purpose and remaining 18 workers were engaged as casual labourers through a jattu contract maistry Boddu Murali Krishnan and they were never engaged on permanent basis and were utilized by the respondent only when they had to load or unload any materials and therefore, the very nature of jobs performed by the workers was casual in nature and they were paid on *pro-rata* basis depending upon the number of bags loaded or unloaded by them and further except for nine workers, the remaining 18 workers were engaged only through contractor.

13. In order to prove the said contention, RW1 has marked the copy of the muster roll maintained by the respondent mill from May 2004 to August 2005 as Ex.R14. Though the learned counsel for the respondent would argue that Ex.R14 would prove the said contention, this court cannot say that his contention is true, since the names have been mentioned in Telugu.

14. The learned counsel for the respondent has further argued that the issue of contract labour is governed by the provisions of Contract Labour (Regulation and Abolition) Act, 1970 and the said act clearly permits the respondent to engage the contract labours and they cannot be required to order absorption of the contract labour working in the establishment concerned. In order to support his contention, he relied upon the following decisions:-

Steel Authority of India Limited Vs. Union of India and others CDJ 2006 SC 797:

"It is not disputed before us that the matter relating to abolition of contract labour being governed by the provisions of 1970 Act, the Industrial Court will have no jurisdiction in relation thereto. It is also not in dispute that the decision of the Constitution Bench of this Court in Steel Authority of India Ltd. (Supra) governs the field.

10. In the said decision, it was, *inter alia*, held: (3) Neither section 10 of the CLRA Act nor any other provision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by the appropriate Government under sub-section (1) of section 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently, the principal employer cannot be required to order absorption of the contract labour working in the establishment concerned. (5) On issuance of prohibition notification under section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to

consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment concerned subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder. (6) If the contract is found to be genuine and prohibition notification under section 10(1) of the CLRA Act in respect of the establishment concerned has been issued by the appropriate government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.”

Gujarat Electricity Board, Thermal Power Station Ukai Vs. Hind Mazdoor Sabha and others

1995 AIR (SC) - 0 - 1893 - 1995 - SCC 527:

“a. If the workmen of the so called contractor allege that in fact the contract is sham and they are in fact the workmen of the principal employer, they may raise the dispute themselves not for abolition of the contract labour system, but for making available to them the appropriate service conditions. When such dispute is raised, it is not for abolition of the contract labour, but for a declaration that the workmen concerned are in fact the employees of the principal employer, and for consequential relief on such declaration.

b. If however, the contract is genuine, the direct workmen of the principal employer may espouse the industrial dispute for abolition of the contract labour system and for absorption of the contractor’s workmen as the direct workmen of the principal employer.

c. When such dispute is raised by the direct workmen of the principal employer, the industrial adjudicator can entertain the reference; but in view

of the provisions of section 10 of the Act, he will have first to direct the workmen to approach the appropriate government for considering the question as to whether the contract labour in question should or should not be abolished under the said provisions.

d. If, on such reference being made by the workmen, the appropriate Government does not abolish the contract labour, the industrial adjudicator has to reject the reference since the jurisdiction to abolish the contract is exclusively vested in the appropriate Government and he has no jurisdiction to adjudicate the dispute.

e. However, if the appropriate government abolishes the contract labour, the industrial adjudicator can proceed to decide (i) as to whether the erstwhile contract labour should be absorbed in the principal establishment; (ii) if so, to what extent and (iii) on what terms.

15. In this case, as already stated, on the side of the petitioner, no document has been filed to prove that the petition mentioned workmen were employees under the respondent. In fact, the learned counsel for the petitioner himself has admitted that the said workmen were the contract labours. Under these circumstances, as held by the Hon’ble Apex Court, the workers, who were engaged as contract labours cannot claim any benefits directly from the respondent.

16. The learned counsel for the respondent further argued that none of the petition mentioned workmen had completed 240 days service in 12 calendar months and none of them are workmen in continuous service as defined in section 25 B of Industrial Disputes Act, 1947 and hence they are not eligible for any compensation under the said Act. In order to support his claim, he relied upon the following decisions:

Range Forest Officer Vs. S.T. Hadimani

2002 STPL (LE) 30859 SC:

“In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding to his termination..... No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside.”

Essen Deinki Vs. Rajiv Kumar

2002 (*) SCC 400:

“The burden of proving completion of 240 days of continuous service is on the employee. It further held that where 240 days continuous service is not completed, compliance of section 25 F is not required and termination was held valid.”

A.V. Rajan Vs. The Presiding Officer, Labour Court and another CDJ 2008 MHC 3631:

“In order to construe that the workman has completed one year of continuous service under the management, firstly, it must be shown that he was employed for a period of not less than 12 calendar months and next, during those 12 calendar months, he had worked for not less than 240 days.”

17. It is pertinent to refer the following decision, which is relevant to this case:-

AIR 2002 SC 1147:

“Workmen claimed that he had worked for more than 240 days which was denied by the employer - Burden of proof -workman was to lead evidence in support of such claim -Filing of an affidavit is only his own statement in his favour and not sufficient evidence to come to conclusion that he had worked for 240 days in a year.”

18. In this case, in order to prove that the said workmen were employed for a period of not less than 12 calendar months and during those 12 calendar months, they had worked for not less than 240 days, no records have been produced on the side of the petitioner. Even in the claim petition, the petitioner had not claimed that the petition mentioned workmen continuously worked in the respondent mill as casual labours. Hence, the petitioner has not fulfilled the requirement of completion of 240 days of continuous service as required under section 25-B of Industrial Disputes Act and as such they cannot claim any relief from the respondent.

19. RW1 has further marked the copy of the letter dated 23-3-2010 issued by Sri Lakshmi Ganesh Modern Rice Mill as Ex.P13 to show that 12 workmen listed as 18, 7, 4, 1, 15, 20, 17, 2, 24, 19, 13 and 9 in the claim statement confirming them as jattu workmen on continuous and full time basis as Ex.R13. A perusal of Ex.R13 reveals that Sri Lakshmi Ganesh Modern Rice Mill confirmed the said workmen as jattu workmen on continuous and full time basis. When the said rice mill has confirmed the said workers, how they claim reinstatement with the respondent. There is no plausible explanation from the side of the petitioner in this regard. Hence, I agree with the contention of the learned counsel for the respondent that the very nature of the job of loading and unloading of materials do not permit any worker to restrict its employment with one company and the jattu workers will do the loading and

unloading for various companies depending upon the arrival and departure of the lorries with materials. In the above circumstances, I feel that the petition mentioned workers as casual labour cannot claim any relief from the respondent. Accordingly, this point is answered.

20. In the result, the industrial dispute is dismissed. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 3rd day of August 2011.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

List of witnesses examined for the petitioner :

PW1 — 26-4-2010 — V. Subba Rao

List of witnesses examined for the respondent :

RW1 — 18-4-2011 — Chintalapudi Sri Bhagavath-geeta Sanjyasi Rao.

List of exhibits marked for the petitioner :

Ex.P1 — Report of Assistant Inspector of Labour, dated 6-10-2005.

Ex.P2 — Representation of the workers.

Ex.P3 — Letter to the Commissioner of Labour, dated 8-12-2005.

Ex.P4 — Letter to Minister of Labour, dated 21-12-2005.

Ex.P5 — Letter to the Lieutenant-Governor, dated 26-12-2005.

Ex.P6 — Demand letter by the petitioner to the respondent, dated 14-8-2005.

List of exhibits marked for the respondent :

Ex.R1 — Photocopy of the lease agreement between Bhagyalakshmi Rice Mill and Ramakrishna Rice Mill.

Ex.R2 — Copy of the lease deed between Bhagyalakshmi Rice Mill and Gaujjaraju Ramakrishna Satyanarayana and others.

Ex.R3 — Copy of the Certificate of Registration of respondent mills, dated 14-5-2003.

Ex.R4 — Copy of lease agreement between Bhagyalakshmi Rice Mills, dated 12-5-2003.

Ex.R5 — Copy of the letter given by the petitioner union, dated 13-9-2005.

Ex.R6 — Copy of the encumbrance certificate.

Ex.R7 — Copy of the statement showing income of Bhagyalakshmi Modern Rice Mill for the assessment year 1997-1998.

- Ex.R8 — Copy of the statement showing income of Bhagyalakshmi Modern Rice Mill for the assessment year 1998-1999.
- Ex.R9 — Copy of the statement showing income of Bhagyalakshmi Modern Rice Mill for the assessment year 1999-2000.
- Ex.R10— Copy of the statement showing income of Bhagyalakshmi Modern Rice Mill for the assessment year 2000- 2001.
- Ex.R11— Copy of the statement showing income of Bhagyalakshmi Modern Rice Mill for the assessment year 2001-2002.
- Ex.R12— Copy of the income statement of the respondent.
- Ex.R13— Copy of the Muster Roll maintained by the respondent.
- Ex.R14— Original letter, dated 23-3-2010 given by Sri Lakshmi Ganesh Modern Rice Mill.
- Ex.R15— Reply letter, dated 27-9-2005 given by the respondent.
- Ex.R16— Notice, dated 11-8-2005 put up in the Notice Board of the firm.
- Ex.R17— Copy of the receipt given by Cosinga P.S, dated 2-1-2006.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(GO. Rt. No. 200/AIL/Lab./J/2011, dated 23rd November 2011)

NOTIFICATION

Whereas, the Award in I.D. No. 8/2007, dated 13-7-2011 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Karteek Metal Industries Private Limited, Adivipolam, Yanam and its workmen viz., (1) Thiru Kamidi Srinivasa Rao, (2) Tmt. Kadali Lakshmi and (3) Ponnada Lakshmi over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-91, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

N. APPA RAO,
Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. MOHANDASS, M.A. M.L.,
II Additional District Judge
Presiding Officer, Labour Court,
Pondicherry.

Wednesday, the 13th day of July 2011

I. D. No. 8/2007

1. Kamidi Srinivasa Rao,
2. Kadali Lakshmi,
3. Ponnada Lakshmi. . . Petitioners

Versus

The Management,
Karteek Metal Industrial Private Limited,
Adivipolam, Yanam. . . Respondent

This petition coming before me for final hearing on 11-7-2011 in the presence of Thiruvalargal R.S. Zivanandam, D. Ravichandran and S. Ashok Kumar, advocates for the petitioners, Thiru L. Sathish and Thiru S. Doraissamy, advocates for the respondent, upon hearing both sides, after perusing the case records and having stood over for consideration till this day, this court delivered the following:

AWARD

This industrial dispute arises out of the reference made by the Government of Pondicherry, *vide* G.O. Rt. No. 45/2007/Lab./AIL/J, dated 14-3-2007 of the Labour Department, Pondicherry, to resolve the following dispute between the petitioners and the respondent, *viz.*,

- (1) Whether the non-employment of the workmen 1. Thiru Kamidi Srinivasa Rao, 2. Tmt. Kadali Lakshmi and 3. Tmt. Ponnada Lakshmi by the management of M/s. Karteek Metal Industrial Private Limited, Adivipolam, Yanam is justified?

- (2) If not, what remedy they are entitled to?

- (3) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. The petitioners in their claim statement would aver that they were the workers of the respondent company and they discharged their work to the satisfaction of the respondent management with unblemishing records, but they were terminated on 18-3-2006 by the respondent without any reason which is against the natural justice. In the absence of domestic enquiry in this respect, the act of the respondent is arbitrary, illegal and liable to be set aside.

3. The respondent filed a counter statement and contended that the petitioners cannot raise an industrial dispute under section 2 A of Industrial Disputes Act

and they are not represented by any union and are representing their individual cases. The petitioners were not the employees under the respondent at any point of time. The petitioners have not mentioned the designation in which they worked or the nature of the work they performed in the respondent company.

The respondent company engages jattu workers in its factory as helpers for loading and unloading materials and loading and unloading is done on random basis depending upon ingress and egress of materials. The scheme of jattu workers is such that number of people will come and wait outside the respondent's factory. If the respondent's factory has loading or unloading work, it will contract a lump sum rate for the entire work. The said maistry will collect a lump sum payment and will engage his men depending upon the volume of work and pay them directly. On days when the respondent do not have loading work, the maistry and his workers will move to next factory, wherever there is loading or unloading work. Thus the respondent will have no direct contacts with any of the jattu workers, who will load or unload the materials and will obviously have no records about such workers. Without admitting the employment of the petitioners, it is possible that some of the petitioners might have been engaged as jattu workers through some maistry only for a short period.

The respondent company closed its manufacturing unit with effect from 20-4-2007 and they paid the unemployment compensation to all the eligible workmen. The petitioners, if genuinely employed, would have approached the respondents for closure compensation along with all other workmen, which they have not done. Hence, they pray for dismissal of the industrial dispute.

4. On the side of the petitioners, PW1 was examined and marked Ex.P1 to Ex.P4. On the side of the respondent, RW1 was examined and Ex.R1 to Ex.RS were marked.

5. *Now the point for determination is:*

"Whether the petitioners are entitled for the relief sought for?"

On this point:

6. The contention of the petitioners is that they were the employees under the respondent company and they were terminated by the respondent without any reason without conducting any domestic enquiry, which is against the provisions of legislations. In order to prove the contention of the petitioners, the first petitioner was examined as PW1 and through him, Ex.P1 to Ex.P4 were marked. The representation, dated 27-7-2006 given by the workers was marked as Ex.P1. Ex.P2 is the reply sent

by the management, dated 6-6-2006, Ex.P3 is the reply given by the workers, dated 28-6-2006 and Ex.P4 is the failure report, dated 15-9-2006.

7. On the side of the respondent, it is submitted that the petitioners were not the employees at any point of time. The learned counsel for the respondent relied upon the following decisions to support his contention:-

2003(4) BCR 189, 2003 (3) ALL MR 950:

"The onus cannot be placed on the management without first determining on the basis of cogent evidence that the workmen did work for more than 240 days in a year preceding his termination. In the present writ petition, the petitioner cannot be said to have produced such evidence on record to shift the onus on the management. The petitioner has not even made an attempt to bring such evidence on their own or by calling upon the witness of the respondent to produce documents such as wage register, attendance register, pay slip, etc., which could have supported the case of the petitioner. The law laid down by the Apex Court in Range Forest Officer case (Supra) is clear answer to the issue of burden of proof."

(2001) III LLJ 23 Mad. :

"It is clear that the petitioner used to attend electrical and plumbing work as and when any need arises and he was not employed continuously. It is also relevant that even in his evidence, the petitioner himself has stated that he not only attended electrical and plumbing work of first respondent management, but also attended work at No. 185, Mount Road, No. 35, Muniappa Road, No. 10, Crescent Road, Adyar and at N.S.C. Bose Road. This version supports the case of the first respondent that the petitioner used to attend other buildings of various concerns."

113(2004) DLT 50, 2004 (76) DRJ 307:

"As there is no relationship of employer and employee between the petitioner and M/s. Ashoka Marketing Limited, the petitioner could not have sought for the relief."

2002 AIR (SC) 0 1147 2002 - SCC - 3 - 25:

"No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside."

(1956)1 MLJ 574:

"When the petitioner proved that in the present case, there was no such relationship between the petitioner and the workers, who were impleaded as

third respondent, the government in their counter affidavit stated in paragraph 2 that if there does not exist such a relationship (that is employer and employee) his contention that there was no industrial dispute and that the reference made by the Government as if there was such a dispute was without jurisdiction may be correct.

8. In order to support their contention, the authorised signatory of the respondent's company was examined as RW1 and through him, Ex.R1 to Ex.R5 were marked. Copy of the closure intimation given by the respondent was marked as Ex.R1, Agreement of closure compensation and terminal benefits as Ex.R2, Photocopy of the receipts given by the workers towards receipt of closure compensation as Ex.R3, Copy of the muster roll maintained by the respondent as Ex.R4 and copy of the wage register maintained by the respondent as Ex.R5.

9. It is true that there is no document on the side of the petitioners to prove that they were the employees under the respondent company. The respondent has also denied that the petitioners were employees in their company. But when we peruse the letter, dated 6-6-2006 sent by the respondent management to the Assistant Inspector of Labour, which has been marked as Ex.P2, in which they have stated as follows:-

"The complainants were not in continuous service anytime as claimed nor they were employed in any permanent capacity by the company during the alleged period."

From the above admission of respondent company, it is seen that the respondent has not denied that the petitioners were the employees under them, but they have stated that the petitioners were not in continuous service or they were the permanent employees. Hence, the respondent has indirectly admitted that the petitioners were their employees either as casual or as temporary.

10. Further on the side of the respondent, the copy of the muster roll maintained by the respondent and the copy of the wage register maintained by the respondent were marked as Ex.R4 and Ex.R5 respectively to show that the petitioners were not the employees at the relevant point of time. A perusal of those documents reveals that the petitioners' name has not been found place from January 2005 to December 2005. According to the petitioners, the 1st petitioner was working from 26-9-2001 and the 2nd and 3rd petitioners were working for more than two years. The respondent has not produced the wage register or attendance register from the year 2001 to show that the petitioners were not the employees under them from the year 2001. Further the muster roll Ex.P4 and the wage register Ex.P4 have not

been certified by the Factory Inspector of Labour Department. In this regard, the learned counsel for the petitioner put questions to RW1 during the cross examination and he admitted that he filed Ex.P4 without certifying by the Factory Inspector. Hence, the documents under Ex.P4 and Ex.P5 cannot be accepted.

11. Section 2(2) of Industrial Dispute Act defines "Workman" as follows:- "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute."

As per the provision of the Industrial Disputes Act, a workman need not be permanent worker. A workman may be casual or temporary. He is eligible for the benefits of all the labour legislations available to the employees. Of course it is the duty of the workman to prove the case that he has completed 240 days continuous service as per the statutes. But the management has not produced the muster rolls from the year 2001 that too the muster roll Ex.P4 produced was also not certified by the Labour Officer concerned, which was also admitted by RW1. Hence, the adverse inference can be easily drawn as per section 114 of Indian Evidence Act. In these circumstances, I presume that the petitioners were all working from the relevant periods as they stated in the claim statement.

12. Another contention of the respondent is that the petitioners No.1 to 3 cannot file the petition under 2 A of Industrial Disputes Act because they were not represented by any union and hence the petition is liable to be dismissed as not maintainable. The petitioners No.1 to 3 approached the Conciliation Officer for the re-employment and the Conciliation Officer after filing the conciliation report referred the matter to this court for proper adjudication. Because of mere technicalities, the reference need not be closed or returned to the government. The final solution will be solved only after proper adjudication in this matter by the Labour Court.

13. RW1 in his evidence has deposed that the respondent company closed its manufacturing unit with effect from 20-4-2007 and they paid the unemployment compensation to all the eligible workmen and the petitioners, if genuinely employed, would have approached the respondents for closure compensation along with all other workmen. In order to prove the same, RW1 has marked Ex.R1 the copy of closure intimation and Ex.R2 Agreement on closure compensation, which would prove the said fact. But during the cross examination, RW1 has admitted that there were 29

employees working in their factory and out of the said 29 employees, they have settled the closure compensation only to the 11 employees. There is no plausible explanation from RW1 as to why others have not settled the remaining employees, who were admittedly employed in the respondent's factory at the relevant point of time.

14. The learned counsel for the respondent would submit that the respondent company engages jattu workers in its factory as helpers for loading and unloading materials and loading and it is possible that some of the petitioners might have been engaged as jattu workers through some maistry only for a short period. But on the side of the respondent, no document was produced to prove that they used to engage jattu workers for loading and unloading materials. In the absence of sufficient evidence, this contention cannot be accepted. Hence, from the oral and documentary evidence available on both sides, this court comes to the conclusion that the petitioners were the employees under the respondent factory and the termination of the petitioners by the respondent is not justified and the decisions cited by the learned counsel for the respondent are not applicable to the present facts and circumstances of the case.

15. As per the evidence of RW1, the respondent company has been closed and the compensation and terminal benefits have been given to some of their employees. In these circumstances, the reinstatement of the petitioners cannot be made. Hence, considering the facts and circumstances of the case, the petitioners can be given monetary benefit, based on the service rendered by them in the respondent company. According to the petitioners, the first petitioner was working under the respondent company from 26-9-2001 and the second and third petitioners were working for more than two years. Hence, I feel that the monetary compensation of ₹ 20,000 can be given to the first petitioner and ₹ 16,000 each to the second and third petitioners, which would meet the ends of justice. Accordingly, this point is answered.

16. In the result, the industrial dispute is partly allowed. The respondent is hereby directed to pay the monetary compensation of ₹ 20,000 to the first petitioner and ₹ 16,000 each to the second and third petitioners. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 13th day of July 2011.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

List of witnesses examined for the petitioner :

P.W.1 — 26-4-2010 Kamidi Srinivasa Rao

List of witnesses examined for the respondent :

RW1 — 18-4-2011 N. Ramam

List of exhibits marked for the petitioner :

Ex.P1 — Representation of the workers, dated 27-7-2006

Ex.P2 — Reply of the management, dated 6-6-2006

Ex.P3 — Reply given by the workers, dated 28-6-2006.

Ex.P4 — Failure report, dated 15-9-2006

List of exhibits marked for the respondent :

Ex.R1 — Copy of closure intimation given by the respondent, dated 6-11-2007

Ex.R2 — Agreement on closure compensation and terminal benefits.

Ex.R3 — Photocopy of the receipts given by the workers towards receipt of closure compensation.

Ex.R4 — Copy of wage register maintained by the respondent.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

**GOVERNMENT OF PUDUCHERRY
DEPARTMENT OF PERSONNEL AND
ADMINISTRATIVE REFORMS (PERSONNEL WING)**

(G.O. Ms. No. 82, dated 30th November 2011)

NOTIFICATION

On attaining the age of superannuation, Thiru B. Santhanakrishnan, Pondicherry Civil Service (JAG) Officer presently working as Director of Art and Culture, Puducherry shall retire with effect from the afternoon of 30-11-2011.

(By order)

GIDDI MRUTHYUNJAYA DURGA RAO,
Under Secretary to Government.